

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER P. SCHWEICKERT,

Plaintiff,

No. 13-CV-675

v.

OPPOSITION TO MARK D.
KIMBALL'S NOTICE OF LIMITED
APPEARANCE

HUNTS POINT VENTURES, INC.; HUNTS
POINT VENTURE GROUP, LLC; CHAD and
ELIZABETH RUDKIN, and their marital
community comprised thereof; JOHN DU
WORS and AMBER DU WORS, and their
marital community comprised thereof; and
DOES 1-4,

Defendants.

By and through their counsel, Defendants Chad Rudkin and Elizabeth Rudkin respectfully request that the Court strike the Notice of Limited Appearance of Mark D. Kimball, Dkt. No. 48, for failure to comply with federal rules of practice. Plaintiff's counsel must file a general notice of appearance applicable to the duration of the litigation, or elect not to appear on behalf of Plaintiff at all.

Plaintiff's counsel's Notice of Limited Appearance is not supported by this Court's Local Rules. Local Rule 83.2 governs attorney appearances and withdrawal. Under subpart (a), "An attorney eligible to appear may enter an appearance in a civil case by signing and filing a Notice of Appearance, complaint, amended complaint, answer, amended answer, Notice of Removal, motion to intervene, or motion of joinder on behalf of the party the attorney represents." Local

OPPOSITION TO MARK D. KIMBALL'S NOTICE OF
LIMITED APPEARANCE- 1
Case No. 13-CV-675

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 Rule 83.2 does not mention limited appearances, nor is there any reference to the practice in any
2 other Local Rule.

3 The Federal Rules of Civil Procedure grant no authority for the proposed limited
4 appearance, instead leaving the details of appearances to be established by the district courts. *See*
5 *In Re Merriam*, 250 B.R. 724, 734 (Bankr. D. Colo. 2000) (“The manner of entering an
6 appearance is regulated by local [not federal] rule.”); *see also* FED. R. CIV. P. 83 (providing
7 district courts with the authority to enact local rules).

8 In this federal case, Plaintiff appears to rely on Washington State Civil Rules 4.2(b) and
9 70.1(b) which authorize notices of limited appearance in state court proceedings, permitting
10 counsel to provide limited representation for a specific proceeding, such as a deposition or
11 motion. However, Washington rules of civil procedure are not applicable in this proceeding, in a
12 federal Court. Where a federal court has jurisdiction, it generally does not apply or defer to state
13 procedural rules. *See* FED. R. CIV. P. 1; *Uzzell v. Teletech Holdings, Inc.*, C07-0232 MJP, 2007
14 WL 4358315, at *2 (W.D. Wash. Dec. 7, 2007) (“Absent contrary authority, the Court applies
15 the Federal Rules of Civil Procedure, and not Washington State procedural rules to civil actions
16 over which the Court has jurisdiction.”); *Oliver v. In-N-Out Burgers*, 286 F.R.D. 475, 477 (S.D.
17 Cal. 2012) (“Where state law directly conflicts with applicable provisions of the Federal Rules of
18 Civil Procedure, federal courts must apply the Federal Rules—not state law”) (internal citations
19 omitted); *Mitchell v. Carborundum Co*, 7 F.R.D. 523 (W.D.N.Y. 1947) (noting that to determine
20 the sufficiency of a notice of appearance in a New York federal court, the federal rules rather
21 than the New York rules control). As the federal, rather than state, rules apply in this case,
22 Plaintiff’s counsel’s Notice of Limited Appearance is improper, and should be stricken.

23 Furthermore, counsel’s limited appearance is not supported in practice. Limited
24 appearances do arise in the context of in bankruptcy, admiralty or in rem/quasi in rem action to
25 dispute jurisdiction. *See, e.g.*, Supplemental Rule E(8) (permitting “restricted appearance” to
26 defend against property seizure in admiralty and maritime claims); 4B CHARLES ALAN WRIGHT

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1 & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1123 (3d ed. 1997) (describing the
 2 permissibility of limited appearances in quasi-in-rem actions); *In Re Merriam*, 250 B.R. 724, 734
 3 (Bankr. D. Colo. 2000) (noting that limited appearances are not authorized in matters before the
 4 United States District Court for the District of Colorado, but stating that limited representation
 5 by debtor's counsel in a bankruptcy cases is common). However, there is no authority that
 6 supports Plaintiff's efforts to have new counsel appear well into the course of this litigation for
 7 the sole purpose of representing Plaintiff at a deposition.

8 In sum, Plaintiff's counsel's Notice of Limited Appearance is improper, and it should be
 9 stricken. Plaintiff's counsel must instead file a general notice of appearance or decline to appear
 10 on behalf of Plaintiff in this matter.

11 DATED this 3rd day of July, 2014.

12 FOSTER PEPPER PLLC

13 s/s Joel B. Ard

14 Joel B. Ard, WSBA # 40104

15 s/s Rylan L.S. Weythman

16 Rylan L. S. Weythman, WSBA # 45352

17 1111 Third Avenue, Suite 3400

18 Seattle, WA 98101

19 Tel: 206-447-6252

20 Fax: 206-749-2063

21 Email: ArdJB@Foster.com ,
 22 weytr@foster.com

23 Counsel for Defendants Chad Rudkin and
 24 Elizabeth Rudkin

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 26
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CERTIFICATE OF SERVICE

I, Joel B. Ard, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, who will electronically send notification of such filing to all parties who have appeared in this action as of today's date.

There are no other parties who have appeared in this action as of today's date that need to be served manually.

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of July, 2014.

/s/ Joel B. Ard

Joel B. Ard

CERTIFICATE OF SERVICE
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